THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.15089 of 2004

-

Dated:02.03.2006

Between:

M/s Renewable Energy Systems Limited, A Public Limited Company, Having its Registered Office at
D-52, Phase-V, IDA Jeedimetla, Hyderabad-55 rep.by its Director Mr.G.N.Rao, s/o G.Prabhakara Rao, aged 48 years, and another.

..... PETITIONERS

AND

Union of India represented by the Secretary to Government Department of Revenue Ministry of Finance
and Company Affairs, New Delhi, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

–

WRIT PETITION No.15089 of 2004

ORDER:

–

The third respondent herein passed orders on 08.07.2004 under Sections 49(3) and 49(4) of the Foreign Exchange Management Act, 1999 (for short 'FEMA') read with the Government of India Notification No.S.O.308(E), dated 20.03.2003, whereby and whereunder, the third respondent was appointed as a person to function as an Officer of Enforcement to adjudicate cases for contravention made on or before 31st May 2002 of the provisions of the Foreign Exchange Regulation Act, 1973 (for short 'FERA'). This order is assailed in the writ petition along with the notification of the Central Government, dated 20.03.2003, whereunder the third respondent was appointed as authorized functionary for the purpose of FEMA. By impugned order, the third respondent imposed a consolidated penalty of Rs.35 lakhs on the petitioners directing them to deposit the penalty within 45 days from the date of receipt of the order.

In the writ petition, *inter alia,* on the ground that the contraventions under the repealed Act cannot be dealt with under FEMA, especially, after expiry of a period of two years from the date of commencement of the repealed Act (FERA). The petitioners also do not, however, deny that against the order of the third respondent, they have an effective alternative remedy by way of an appeal to the Appellate Tribunal of Foreign Exchange.

In that view of the matter, even if the petitioners are entitled to challenge the

Government of India notification, dated 20.03.2003, conferring powers on the third respondent, after considerable delay, is maintainable. It shall always be open to the petitioners to approach the Appellate Tribunal for Foreign Exchange. Liberty is given to the petitioners to do so. The submission of the learned Assistant Solicitor General that in view of Section 49(4) of FEMA, the offences committed under FERA shall continue to be governed by the repealed Act is recorded. Having regard to the decision of this Court in **Mohd.Mustafa Ahmed Alvi v. Union of India**, the Writ Petition, with the above observations, is dismissed. No costs.

_____

(V.V.S.RAO, J)

02.03.2006

vs